

**1. Applicant's Name:** [REDACTED]

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** None

**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the current discharge lacks evidence. If the applicant was found to have used drugs, the applicant should have been stripped of rank at the time of the discharge. The applicant recognizes while issuing a general (under honorable conditions) discharge, there should have been a list of reasons for the discharge, which the applicant never obtained, despite several requests. The applicant is currently working as a deputy sheriff in Grundy County, Missouri, and desires to have the current shadow removed from the record. The applicant demanded copies of the 270-plus pages, despite the applicant's name being listed on only two pieces of paper during the three-day interrogation of the whole battalion. During one of the interviews, the applicant stated feeling compelled to make a false confession of guilt, which the applicant eventually did. There was no evidence of guilt other than the applicant's assertion about just wanting it to be over with. The applicant was coerced into falsely confessing guilt so the applicant could depart. The commanding officer, being so eager to get rid of the applicant, failed to submit the necessary documentation to finalize the discharge. The applicant is deserving of an upgrade because the discharge was both inequitable and improperly handled.

b. **Board Type and Decision:** In a records review conducted on 15 February 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

*Please see Section 9 of this document for more detail regarding the Board's decision.*

*(Board member names available upon request)*

**3. DISCHARGE DETAILS:**

a. **Reason / Authority / Codes / Characterization:** Misconduct (Drug Abuse) / AR 635-200, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 21 November 2011

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 10 September 2011

(2) **Basis for Separation:** The applicant was informed of the following reasons: Between 1 and 30 April, and 1 and 15 May 2011, the applicant wrongfully used hashish, a Schedule I controlled substance, while receiving hazardous duty pay.

(3) **Recommended Characterization:** General (Under Honorable Conditions)

(4) **Legal Consultation Date:** 16 September 2011

(5) **Administrative Separation Board:** NA

(6) **Separation Decision Date / Characterization:** 27 September 2011 / General (Under Honorable Conditions)

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 28 January 2009 / 3 years, 22 weeks

b. **Age at Enlistment / Education / GT Score:** 22 / High School Graduate / 108

c. **Highest Grade Achieved / MOS / Total Service:** E-4 / 31B10, Military Police / 2 years, 9 months, 24 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** SWA / Afghanistan (6 January 2011 – 20 October 2011)

f. **Awards and Decorations:** ACM-CS, NATOMDL, NDSM, ACM-2CS-2, GWOTSM, ASR, OSR, PH, CAB / The applicant's AMHRR reflects award of the MUC; however, the award is not reflected on the DD Form 214.

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:** Summarized Article 15, 1 April 2010, for being derelict in the performance of duties on 7 December 2009. The punishment consisted of extra duty and restriction for 14 days.

FG Article 15, 12 August 2011, for making a false official statement on 3 August 2011, and wrongfully using hashish on two separate occasions (between 1 and 30 April, and 1 and 15 May 2011). The punishment consisted of a reduction to E-1; forfeiture of \$734 pay per month for two months; extra duty for 45 days; and restriction for 45 days (suspended).

i. **Lost Time / Mode of Return:** None

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** Chronological Record of Medical Care, 7 June 2011, reflects the applicant was evaluated for mTBI, a concussion with no loss of consciousness from an IED injury on 7 June 2011.

(2) **AMHRR Listed:** Report of Medical History, 19 August 2011, the applicant noted behavioral health issues and the examining medical physician's comment is illegible.

Report of Mental Status Evaluation, 20 August 2011, reflects the applicant was cleared for administrative separation. The applicant had been screened for PTSD with negative results and mTBI with positive results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The applicant was diagnosed with: Axis I, 309.9 Adjustment Disorder Unspecified; 292.0 Cannabis Related Disorder.

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293; DD Form 214; DD Form 215; Chronological Record of Medical Care; and Form W-2.

**6. POST SERVICE ACCOMPLISHMENTS:** The applicant has obtained employment as a deputy sheriff.

**7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):**

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo]).

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board) sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10, United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) Paragraph 14-12c(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under paragraph 14-12a or 14-12b as appropriate.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty,

and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, misconduct (drug abuse).

f. Army Regulation 601-210, (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1 defines reentry eligibility (RE) codes: RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

**8. SUMMARY OF FACT(S):** The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable.

The applicant contends the narrative reason for the discharge needs to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c(2), AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Drug Abuse)," and the separation code is "JKK." Army Regulation 635-8 (Separation Processing and Documents) governs preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends deserving an upgrade because the discharge was inequitable and improperly handled; it lacked evidence; a list of reasons for the discharge was never provided to the applicant, despite several requests; the applicant was coerced into falsely confessing guilt; and the commander failed to submit the necessary documents to finalize the discharge. The applicant's AMHRR shows the applicant acknowledged receipt of the notification of initiation of separation proceedings on 10 September 2011. The notification informed the applicant of the specific reason for separation, wrongfully using a Schedule 1 controlled substance while receiving hazardous duty pay, between 1 and 30 April 2011 and 1 and 15 May 2011. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends obtaining employment as a deputy sheriff in Grundy County, Missouri. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

The applicant's AMHRR contains documentation which supports a diagnosis of an adjustment disorder and cannabis-related disorder. The applicant provided several medical documents indicating an IED injury resulting in a concussion with no loss of consciousness and being

evaluated for mTBI. The record shows the applicant underwent a mental status evaluation (MSE) on 20 August 2011, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The MSE was considered by the separation authority.

#### 9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Adjustment Disorder, Post Traumatic Stress Disorder, Traumatic Brain Injury.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder and is diagnosed and service connected by the VA for PTSD and TBI. Service connection establishes that the applicant's PTSD and TBI also existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence of BH conditions that mitigate the basis of separation. Given the nexus between PTSD and self-medicating with substances, the hashish use that led to the applicant's separation is mitigated. The applicant's TBI did not contribute to the misconduct because it occurred afterwards.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's Post Traumatic Stress Disorder outweighed the applicant's illegal substance abuse.

b. Response to Contention(s):

(1) The applicant contends deserving an upgrade because the discharge was inequitable and improper handled; it lacked evidence; a list of reasons for the discharge was never provided to the applicant, despite several requests; the applicant was coerced into falsely confessing guilt; and the commander failed to submit the necessary documents to finalize the discharge. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention during proceedings, and voted to change the narrative reason based upon the applicant's Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse.

(3) The applicant contends obtaining employment as a deputy sheriff in Grundy County, Missouri. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse.

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**AR20210001272**

c. The Board determined the discharge is inequitable based on the applicant's Post Traumatic Stress Disorder outweighing the applicant's illegal substance abuse. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN, and the reentry code to RE-3.

**d. Rationale for Decision:**

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Post Traumatic Stress Disorder outweighed the applicant's illegal substance abuse. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

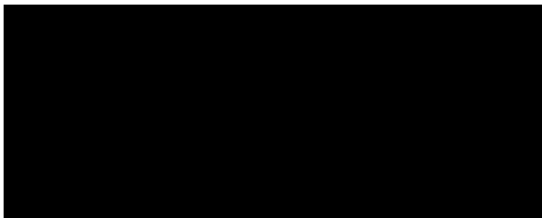
(3) The RE code will change to RE-3 due to the applicant's behavioral health conditions that require review prior to any reentry into military service.

**10. BOARD ACTION DIRECTED:**

- a. **Issue a New DD-214:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Misconduct (Minor Infractions)/JKN
- d. **Change RE Code to:** RE-3
- e. **Change Authority to:** AR 635-200

**Authenticating Official:**

4/5/2024



**Legend:**

AWOL – Absent Without Leave  
AMHRR – Army Military Human Resource Record  
BCD – Bad Conduct Discharge  
BH – Behavioral Health  
CG – Company Grade Article 15  
CID – Criminal Investigation Division  
ELS – Entry Level Status  
FG – Field Grade Article 15

GD – General Discharge  
HS – High School  
HD – Honorable Discharge  
IADT – Initial Active Duty Training  
MP – Military Police  
MST – Military Sexual Trauma  
N/A – Not applicable  
NCO – Noncommissioned Officer  
NIF – Not in File  
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty  
OBH (I) – Other Behavioral Health (Issues)  
OMPF – Official Military Personnel File  
PTSD – Post-Traumatic Stress Disorder  
RE – Re-entry  
SCM – Summary Court Martial  
SPCM – Special Court Martial

SPD – Separation Program Designator  
TBI – Traumatic Brain Injury  
UNC – Uncharacterized Discharge  
UOTHC – Under Other Than Honorable Conditions  
VA – Department of Veterans Affairs